

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ASSOCIATION FOR MOLECULAR PATHOLOGY;
AMERICAN COLLEGE OF MEDICAL GENETICS;
AMERICAN SOCIETY FOR CLINICAL PATHOLOGY;
COLLEGE OF AMERICAN PATHOLOGISTS; HAIG
KAZAZIAN, MD; ARUPA GANGULY, PhD; WENDY
CHUNG, MD, PhD; HARRY OSTRER, MD; DAVID
LEDBETTER, PhD; STEPHEN WARREN, PhD; ELLEN
MATLOFF, M.S.; ELSA REICH, M.S.; BREAST CANCER
ACTION; BOSTON WOMEN'S HEALTH BOOK
COLLECTIVE; LISBETH CERIANI; RUNI LIMARY;
GENAE GIRARD; PATRICE FORTUNE; VICKY
THOMASON; KATHLEEN RAKER,

Plaintiffs,

v.

UNITED STATES PATENT AND TRADEMARK
OFFICE; MYRIAD GENETICS; LORRIS BETZ, ROGER
BOYER, JACK BRITTAIN, ARNOLD B. COMBE,
RAYMOND GESTELAND, JAMES U. JENSEN, JOHN
KENDALL MORRIS, THOMAS PARKS, DAVID W.
PERSHING, and MICHAEL K. YOUNG, in their official
capacity as Directors of the University of Utah Research
Foundation,

Defendants.

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09 Civ. 4515 (RWS)

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MEMORANDUM OF LAW
OF ROSETTA GENOMICS
AND GEORGE MASON
UNIVERSITY IN SUPPORT
OF MOTION FOR LEAVE
TO FILE *AMICUS CURIAE*
BRIEF

Proposed *Amicus Curiae*, Rosetta Genomics Ltd., Rosetta Genomics Inc., and
George Mason University submit this memorandum of law in support of their motion for
leave to file a brief *amicus curiae*.

I. INTRODUCTION AND INTERESTS OF PROPOSED *AMICUS CURIAE*

Rosetta Genomics, Ltd. ("Rosetta Genomics") is a leading molecular diagnostics
company advancing minimally-invasive molecular tests based on the use of nucleic acids found
in the human body, and platform technologies. Rosetta Genomics Inc., is a wholly owned, U.S.

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subsidiary of Rosetta Genomics. Rosetta Genomics has launched three diagnostic tests for cancer and is currently developing additional tests for the diagnosis of additional human cancers. In addition, Rosetta Genomics is the owner of numerous patents claiming isolated nucleic acid sequences. See, for example, U.S. Patent Nos. 7,618,814, 7,592,441, 7,250,496, 7,217,807 and 7,642,348. Thus, issues raised in this case are of great importance to Rosetta Genomics and Rosetta Genomics Laboratories.

George Mason University is a public university located in Virginia. The university includes numerous laboratories and facilities conducting cutting-edge research in the biosciences, including cancer research and proteomics. Its new biomedical research laboratory is one of 13 nationwide being built with the help of a \$25 million grant from the National Institute of Allergy and Infectious Diseases. Certain research conducted by the universities' scientists is incorporated into patent applications covering cancer diagnostics. See, for example, U.S. Patent Publication No. 2009/0275546. Thus, issues raised in this case are of great importance to George Mason University.

Rosetta Genomics and George Mason University have reached out to the parties in this case seeking their consent to the filing of a brief *amicus curiae*. Counsel for Plaintiffs, Myriad Genetics, the Directors of the University of Utah Research Foundation and the United States Patent and Trademark Office have consented to the filing of the proposed *amicus curiae* brief.

Rosetta Genomics and George Mason University seek leave to file their proposed *amicus curiae* brief, submitted herewith, in order to assist the Court with the complex and important issues raised by this case.

II. ARGUMENT

Federal District Courts are afforded broad discretion in allowing the filing of briefs

amicus curiae. *United States v. Ahmed*, 788 F.Supp. 196, 198 n.1 (S.D.N.Y. 1992) ("District courts have broad discretion to permit or deny the appearance of amici curiae in a given case."). Amicus participation has been recognized by this Court as useful in situations where "participation will not prejudice any party and may be of assistance to the court." *Strougo v. Scudder, Stevens & Clark, Inc.*, No. 96-cv-2136, 1997 WL 473566, at *3 (S.D.N.Y. 1997). In particular, this Court has recognized the importance of granting leave for participation by amicus curiae when such participation may result in the advancement of policy arguments capable of illuminating the legal issues in dispute. *Id.* (granting leave for *amicus curiae* to participate when "the policy arguments advanced by the [*amicus curiae*] may illuminate the legal issues presented by this motion").

III. CONCLUSION

In view of the foregoing, Rosetta Genomics and George Mason University respectfully request that this Court grant their Motion for Leave to File the proposed *amicus curiae* brief submitted herewith.

Dated: January 11, 2010

Respectfully Submitted:

By: Robert A. Scher

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University*